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Supreme Court, U.S.
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No. 92-1806

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

****

PETITION OF CHARLES L. MEYER,
Petitioner,

JOHN LELSZ, ET AL,
Respondents

v.

JOHN J. KAVANAGH, M.D., ET AL,
Respondents

****

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

****

BRIEF IN OPPOSITION BY STATE RESPONDENTS

****

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QUESTIONS PRESENTED

1. Whether one who was not a party to the proceedings below has standing to request review of the unanimous decision of the Court of Appeals?

2. Whether one who is not aggrieved by a judgment has standing to request review of the unanimous decision of the Court of Appeals approving the judgment?

3. Whether one who asserts the rights of third parties rather than his own has standing to request review of the unanimous decision of the Court of Appeals?

4. Whether the unanimous decision of the Court of Appeals decision upholding a settlement agreement among the parties is consistent with the law of the case and legal precedent?

LIST OF ALL PARTIES

Named Plaintiffs

John Lelsz, Jr., by and through his next friends, John Lelsz, Sr. and Ruth Lelsz.

Jean Gibson, by and through her next friend, Beryl Gibson.

Stoyan Sephus, by and through his next friend, Roxy Sephus.

Michael Huffman.

Plaintiff Class

All residents of the Austin, Denton or Fort Worth State Schools, or former residents since November 27, 1974 and all persons who have appeared on the Registry for State School Placement since 1981.

Defendants

The Texas Commissioner of Mental Health and Mental Retardation, Dennis Jones, the Deputy Commissioner for Mental Retardation Services, Jaylon Fincannon, all members of the Texas Board of Mental Health Retardation, and the Superintendents of Austin, Denton and Fort Worth State Schools.

Intervenors

Advocacy, Inc.

Parent Association for the retarded of Texas

LIST OF ALL PARTIES - Continued

Petitioner

Charles L. Meyer (not a party in the District Court)[1]

[1] Although not a party in the District Court, Meyer, who is the father of one of the small number of class members who objected to the settlement, filed an appeal to the Fifth Circuit Court of Appeals. The Fifth Circuit's affirmance of the settlement approval is the subject of Meyer's certiorari petition. No party in the court below has joined this certiorari request.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF ALL PARTIES ii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

REASONS WHY THE PETITION SHOULD BE DENIED 3

I. Charles L. Meyer Was Not a Party to the Proceedings Below, and Lacks Standing to Request Review of the Decision of the Court of Appeals 3

II. Charles L. Meyer is not a Party Aggrieved by the Judgment He Asks this Court to Review 4

III. The Rights which Meyer Asserts are the Rights of Third Parties Rather than his Own 5

IV. The Ruling of the Court of Appeals is Consistent with Precedent and with the Law of the Case 6

CONCLUSION 7

APPENDIX A-1

TABLE OF AUTHORITIES

CASES

Bender v. Williamsport School Dist.,
475 U.S. 534 (1986) 5

Lelsz v. Kavanagh,
807 F.2d 1243 (5th Cir. 1987) 2, 6

Marino v. Ortiz,
484 U.S. 301 (1988) 3

Pennhurst State School v. Halderman,
465 U.S. 89 (1984) 6

United Airlines, Inc. v. McDonald,
432 U.S. 385 (1977) 3

United States v. Little Joe Trawlers, Inc.,
780 F.2d 158 (1st Cir. 1986) 4

Walker v. City of Mesquite,
858 F.2d 1071 (5th Cir. 1988) 4

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

****

STATEMENT OF JURISDICTION

This Court does not have jurisdiction over this case. Meyer did not intervene in District Court until after the decision of the Court of Appeals, which he asks this Court to review, and he lacks standing here.

STATEMENT OF THE CASE

This class action lawsuit has litigated, over the course of its nineteen-year existence, issues concerning the care and treatment of persons with mental retardation in the Texas state schools. The class certified by the District Court consists of all residents of the Austin, Denton, and Fort Worth State Schools, former residents since 1974, and all people who have been on the Registry for State School Placement since 1981. The class numbers approximately 5,700 members. The original defendants, officials

representing the Department of Mental Health and Mental Retardation of the State of Texas, were eventually joined by intervenor Parent Association of the Retarded of Texas ("PART"). Charles L. Meyer is a member of PART. Advocacy, Inc. intervened on behalf of the plaintiff class.

In 1983 the parties entered into a consent decree known as the Resolution and Settlement to resolve the litigation, which was approved by the District Court. There was substantial disagreement among the parties about the implementation of the R&S, resulting in a motion by plaintiff's counsel to require defendants to place hundreds of individuals into community settings. The Court of Appeals overruled the District Court's granting of that motion. Lelsz v. Kavanagh, 807 F.2d 1243 (5th Cir. 1987), *reh'g denied* 815 F.2d 1034 (5th Cir. 1987). While the R&S was later clarified by an Implementation Agreement signed by all parties, including PART, disagreement over the application of the R&S continued.

In 1991 the most recent agreement was reached among the state defendants, the plaintiff class, and intervenor Advocacy, Inc.; this settlement was opposed by intervenor PART. The settlement provided for the closure of two state schools and the placement of six hundred individuals with mental retardation in the community. The District Court for the Northern District of Texas approved the settlement agreement on December 30, 1991. 783 F.Supp. 286 (N.D. Tex. 1991). PART appealed the District Court's approval of the settlement to the Fifth Circuit Court of Appeals, which upheld the settlement and issued an order on January 11, 1993. Meyer individually, as well as PART, filed a Notice of Appeal and various briefs on the substantive issue, as well as a long list of motions on assorted topics (a list of the pleadings filed by Meyer, as they appear on the docket of the Court of Appeals, is attached as Appendix A).

On March 29, 1993 Meyer filed a *pro se* motion to intervene in the District Court case "in order to assert a motion for sanctions against the counsel for the Plaintiff class for unprofessional conduct." The District Court denied the Motion to Intervene as untimely on March 30, 1993. Meyer did not appeal this determination. Instead, he filed the petition for certiorari to which this brief responds.

REASONS WHY THE PETITION SHOULD BE DENIED

ARGUMENT

I. CHARLES L. MEYER WAS NOT A PARTY TO THE PROCEEDINGS BELOW, AND LACKS STANDING TO REQUEST REVIEW OF THE DECISION OF THE COURT OF APPEALS

Charles Meyer has never been a party to these proceedings. While he is an individual member of an intervening group, the Parent Association for the Retarded of Texas ("PART"), his motion to intervene as an individual was denied by the District Court on March 30, 1993 (subsequent to the decision of the Court of Appeals which he asks this Court to review). Meyer did not appeal this ruling of the District Court.

Only parties to a lawsuit have standing to appeal. United Airlines, Inc. v. McDonald, 432 U.S. 385 (1977). A recent case before this Court involved an attempt by individuals who were not parties to the underlying lawsuit to appeal from a consent decree approving that lawsuit's settlement. Marino v. Ortiz, 484 U.S. 301 (1988). The Court held that the non-parties lacked standing to appeal. The better practice is for such a nonparty to seek intervention for purposes of appeal; the denials of such motions are of course appealable. 484 U.S. 301, 304. Since Meyer failed to appeal the denial of his motion to intervene, his petition to this Court for certiorari should be denied for lack of standing.

The appellants in Walker v. City of Mesquite, 858 F.2d 1071 (5th Cir. 1988) were members of a certified class, but not named plaintiffs. Like Charles Meyer, they filed a *pro se* notice of appeal from the District Court's approval of a consent decree, even though their motion to intervene had been denied by the District Court. Since appellants had not appealed the denial of the motion to intervene, the Fifth Circuit held that they were constrained to dismiss the appeal for want of jurisdiction. 858 F.2d 1071, 1074.

Meyer's remedy, if his interests were not adequately represented by the intervention of PART, was to intervene in the District Court prior to the appeal. Meyer actually moved to intervene after the decision of the Court of Appeals, and the District Court denied this motion. Meyer did not appeal the ruling of the District Court denying his request to intervene in this case. Having failed to so, he lacks standing to request review of the decision of the Court of Appeals in this case.

II. CHARLES L. MEYER IS NOT A PARTY AGGRIEVED BY THE JUDGMENT HE ASKS THIS COURT TO REVIEW

Meyer objects to the refusal by the Court of Appeals to set aside the District Court's approval of a settlement agreement which provides for the closure of two of the existing thirteen Texas institutions for persons with mental retardation. As Meyer asserts in his petition for certiorari, the schools chosen for closure are the Travis State School and the Fort Worth State School. Meyer also asserts that his son resides at the Austin State School. Meyer claims that he is still concerned, however, because "the governor has stated publicly that the Austin State School will be closed."

To have standing a party must have an immediate and pecuniary interest, not a contingent interest. United States v. Little Joe Trawlers, Inc., 780 F.2d 158 (1st Cir. 1986). Meyer has not shown that the opinion of the Court of Appeals, approving a settlement which will result in closure

of the Travis and Fort Worth State Schools, will affect him or his son in any way.

III. THE RIGHTS WHICH MEYER ASSERTS ARE THE RIGHTS OF THIRD PARTIES RATHER THAN HIS OWN

Since Charles Meyer's son is a resident of a state school which is not slated for closure, the rights which Meyer attempts to assert belong (if they exist at all) to residents of the state schools which are in the process of closing. Meyer has no standing to assert such rights.

This Court recently addressed this issue in Bender v. Williamsport School Dist., 475 U.S. 534 (1986). Students who had been denied a school meeting place for their religious club sued the school district, members of the school board, the superintendent of schools, and the principal. The District Court granted the students' motion for summary judgment, and the school board began permitting students to hold their meetings. Bender, an individual school board member, appealed the District Court's order. This Court held that he lacked standing. The opinion states that Bender could not appeal in his individual capacity because the record did not disclose that relief was sought or given on that basis. On the other hand, Bender could not appeal in his official capacity because standing on that basis belonged only to the school board of which he was a member. Bender then attempted to claim standing on the basis that his child attended the school. This Court held, however, that this basis for standing should have been asserted in the District Court. A party may not add to the record in the Appellate Court to confer standing that does not appear from the trial record.

Similarly, Meyer here attempts to assert rights belonging to the PART group of which he is a member, and attaches in support of his argument a letter from PART stating that the group does not intend to appear. Meyer

lacks standing to request this Court's review of the decision of the Court of Appeals.

IV. THE RULING OF THE COURT OF APPEALS IS CONSISTENT WITH PRECEDENT AND WITH THE LAW OF THE CASE

Meyer's argument appears to focus on the holding of the Fifth Circuit concerning an order purporting to enforce one of the earlier settlement agreements in this case. Lelsz v. Kavanagh, 807 F.2d 1243 (5th Cir. 1987), *reh'g denied* 815 F.2d 1034 (5th Cir. 1987). Plaintiffs had filed a motion with the District Court requesting the immediate placement of hundreds of class members into community settings, to effectuate R&S language which established guidelines for the treatment of the mentally retarded. Defendants argued that this ruling would discriminate unfairly against non-class-members who were equally eligible for community placement. The District Court ordered such placements and the Court of Appeals overruled on the basis of this Court's opinion in Pennhurst State School v. Halderman, 465 U.S. 89 (1984). The Court of Appeals held that since the mentally retarded have no federal constitutional right to community placement, the District Court exceeded its authority by this interpretation of the R&S.

Meyer appears to argue that this ruling is "law of the case" requiring the Court of Appeals to overturn the District Court's approval of the latest settlement agreement in this case. There is no relationship between these concepts. The parties subsequently agreed, in 1991, to close two of the Texas state schools, and to concurrently place a number of individuals with mental retardation in community placements. No issue of the District Court's jurisdiction is raised by the approval of this agreement among the parties. The authorities cited by Meyer are simply inapplicable here.

CONCLUSION

Respondent respectfully requests that this Court deny Petitioner's Writ of Certiorari to the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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APPENDIX

Lelsz v. Kavanagh (5th Circuit Court of Appeals)
Some of the Motions filed by Charles Meyer[2]

91-7033 - from Docket Sheet

3/17/92	Motion of Appellant Meyer in 92-1087 for correction of typing errors in responsive brief filed on 2/12/92. (Granted - SV - 3/17/92).
9/17/92	Appellant's motion for sanctions against counsel for the Intervenor-Appellee Advocacy, Inc., et al. (Also filed in 92-1087).
9/17/92	Appellant's motion to quash the Intervenor Advocacy's brief filed 9/9/92. (Also filed in 92-1087).
9/23/92	Motion of Appellant Meyer for correction of typing error in his motion to quash filed on 9/15/92. (Also filed in 92-1087).
9/23/92	Motion of Appellant Meyer to quash the brief of Appellee Texas Dept. of Mental Health Mental Retardation which was served on him on 9/14/92. (Also filed in 92-1087).
9/28/92	Motion of Appellant Meyer to quash the Appellee's brief which was served on him on 9/21/92. (Also filed in 92-1087).

[2] Several motions were filed after judgment and returned by the Clerk unfiled. The correspondence to those matters is not listed here.

10/2/92 Motion of Appellant Meyer to quash the Appellee's brief which was filed on 9/10/92 and subsequently served on him on 9/23/92. (Also filed in 92-1087).

10/14/92 Motion of Appellant Meyer to quash the brief of Appellee Advocacy, Inc. which was served on him on 10/5/92. (Also filed in 92-1087).

10/26/92 Motion of Appellant Meyer for Reconsideration of that portion of the Court's Order of 10/16/92 which denied the motions to quash the briefs of different Appellees. (Also filed in 92-1087).

11/16/92 Appellant Meyer's second petition for rehearing in response to the Court's Order dated 11/2/92. (Also filed in 92-1087).

11/23/92 Appellant's third motion for correction of typing errors in his petition for rehearing which was filed on 10/24/92. (Also filed in 92-1087). (Unopposed motion granted - SV - 12/1/92).

11/23/92 Appellant's fourth motion for correction of typing errors in his second petition for rehearing which was filed on 11/14/92. (Also filed in 92-1087). (Unopposed motion granted - SV - 12/1/92).

12/2/92 Appellant Meyer's motion to quash the Appellee Advocacy, Inc.'s response brief which was filed on 11/25/92. (Also filed in 91-1087).

92-1087 -- from Docket Sheet

9/17/92 Appellant's motion for sanctions against counsel for Intervenor-Appellee Advocacy, Inc., et al. (Also filed in 91-7033).

9/17/92	Appellant's motion to quash the Intervenor Advocacy's brief filed on 9/9/92. (Also filed in 91-7033).
9/23/92	Motion of Appellant Meyer for correction of typing error in his motion to quash filed on 9/15/92. (Also filed in 91-7033).
9/23/92	Motion of Appellant Meyer to quash the brief of Appellee Texas Dept. of Mental Health Mental Retardation which was served on him on 9/14/92. (Also filed in 91-7033).
9/28/92	Motion of Appellant Meyer to quash the Appellee's brief which was served on him on 9/21/92. (Also filed in 91-7033).
10/2/92	Motion of Appellant Meyer to quash the Appellee's brief which was filed on 9/10/92 and subsequently served on him on 9/23/92. (Also filed in 91-7033).
10/14/92	Motion of Appellant Meyer to quash the brief of Appellee Advocacy, Inc. which was served on him on 10/5/92. (Also filed in 91-7033).
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11/23/92	Appellant's fourth motion for correction of typing errors in his second petition for rehearing which was filed on 11/14/92. (Also filed in 91-7033). (Unopposed motion granted - SV - 12/1/92).
12/2/92	Appellant Meyer's motion to quash the Appellee Advocacy, Inc.'s response brief which was filed on 11/25/92. (Also filed in 91-7033).
12/31/92	Letter from Appellant Meyer dated 12/24/92 advising of corrections of typing errors in his brief and giving an errata to his brief.
3/03/93	Motion of Appellant Meyer for leave to file 2 pleadings out of time.